

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In re Emergency Application of OnSite Access Local, LLC for Authority to Transfer Customers, Abandon Certificates of Public Convenience and Necessity, Terminate Service, and Cancel Effective Tariff.

Application 01-07-033
(Filed July 20, 2001)

O P I N I O N**1. Summary**

OnSite Access Local, LLC (OnSite), which offers telecommunications service to 140 commercial customers in California, has filed for bankruptcy and intends to cease doing business in California. As required by Pub. Util. Code § 2889.3, customers have been notified in advance of the termination of service, and OnSite has offered to assist them in transferring to other carriers. This decision authorizes OnSite to transfer certain assets, including its California customer base, to the parent company of another telecommunications carrier that would continue to provide service to OnSite's customers.

2. Background

OnSite is a limited liability company headquartered in New York City. It is authorized to provide resold and facilities-based interexchange and local exchange telecommunications service in various states. Authorization to provide resold interexchange services in California was granted in Decision (D.) 99-11-063, and resold local exchange authority was authorized in D.00-02-012. The company's utility identification number is U-6270-C.

OnSite and its affiliates filed petitions under Chapter 11 of the Bankruptcy Code on May 16, 2001, in the Bankruptcy Court for the Southern District of New York. OnSite states that it has determined that it must discontinue operations in California. It proposes to transfer certain assets so that customers can be served by another telecommunications company. The transfer would be to Focal Financial Services, Inc. (Focal Financial) and the telecommunications services would be provided by that company's wholly owned subsidiary, Focal Communications of California (Focal Communications).

Focal Communications, a Delaware corporation, is authorized by this Commission to provide competitive local exchange and interexchange services, pursuant to D.98-01-015 and D.98-03-066. Its affiliates provide telecommunications services in 16 other states. According to the application, Focal Communications currently serves about 530 customers in California.

3. Notice to Customers

Under Pub. Util. Code § 2889.3, before a telephone corporation discontinues service to its customers, it must provide affected customers with written notice at least 30 days prior to the termination and assist in transferring the customers to another carrier. The notice must describe the transfer arrangements, set forth the terms and conditions of the new service, and provide a toll-free number for questions. The transfer itself must be made without charge to the customer. Any such transfer is subject to Commission approval.

On or about July 6, 2001, OnSite wrote to all of its data customers in California notifying them of OnSite's intent to discontinue service in the state. It also offered to help transition the customers to another provider. On or about July 12, 2001, OnSite wrote to all of its California voice customers notifying them of OnSite's intent to transition them to Focal Communications or to another

carrier of their choice. The letters of notification, copies of which are included with this application, gave customers a 1-800 number and a website address to deal with questions.

4. Proposed Transaction

OnSite proposes to transfer to Focal Financial certain assets used for voice services at several buildings in California, including equipment, customer contracts, accounts receivable, and other assets necessary to provide voice service to customers in the affected buildings. In order to maintain OnSite's assets until the transfer is completed, OnSite will continue to provide billing, technical support and customer care functions.

In response to questions by the Administrative Law Judge, OnSite states that it is its understanding that Focal Communications will continue to provide services to OnSite's customers under the same terms, conditions and prices that OnSite currently provides service.

On July 19, 2001, OnSite filed its Advice Letter 4 seeking approval to transfer assets, including its customer base in California, to Focal Communications and its parent. The Commission in D.94-05-051 authorized nondominant interexchange carriers to use the Advice Letter process to transfer assets and control to another certificated carrier. In D.97-06-096, we imposed additional requirements for such a transfer, including written notice to customers at least 30 days in advance of transfer and a statement of customers' rights in such transactions. In D.98-07-094, we authorized competitive local carriers to transfer assets and customer base through the Advice Letter process.

5. Discussion

We accept OnSite's representations that its withdrawal from the telecommunications market is necessary in view of the company's financial

distress. Under the transfer plan proposed by OnSite, the public will not be unduly harmed by the withdrawal because other telecommunications carriers, including Focal Communications, have the ability to provide customers with comparable services.

OnSite has undertaken the customer notification process required by the Commission, providing customers with sufficient notice and opportunity to select another provider and minimize service disruption.

Under Pub. Util. Code § 851, the transfer of utility assets necessary or useful in the performance of the utility's duties to the public requires the approval, in advance, of this Commission. The transfer proposed here serves the public interest in that it will permit service to be continued without interruption.

We will authorize the transfer of assets to Focal Financial for use by Focal Communications in providing continued service to OnSite's customers. We also direct OnSite to file an advice letter surrendering its certificate of public convenience and necessity following transfer of assets and transition of OnSite's customers to other carriers.

Notice of this application appeared in the Commission's Daily Calendar of July 31, 2001. By order of the Chief Administrative Law Judge, the comment period was reduced to 10 days. No comments were received.

In Resolution ALJ 176-3068, dated August 2, 2001, the Commission preliminarily categorized this as a ratesetting proceeding and preliminarily determined that a hearing would not be necessary. There are no material facts in dispute and no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. OnSite, a telecommunications carrier, has filed for bankruptcy and intends to cease doing business in California.
2. OnSite seeks authority to transfer certain assets, including its California customer base, to Focal Financial for use by its wholly owned subsidiary, Focal Communications, subject to this Commission's approval under Pub. Util. Code § 851.
3. Focal Communications is authorized to provide competitive local exchange and interexchange services in California.
4. OnSite has notified its customers of its plans to terminate service and has advised them how to select a new service provider.
5. OnSite intends to cancel its California certificate of public convenience and necessity after transition of customers has been accomplished.

Conclusions of Law

1. No protests have been filed, and no hearing is necessary.
2. The application should be granted, subject to conditions regarding customer notice.
3. This order should be made effective immediately in order to minimize disruption of service for OnSite's customers.

O R D E R

IT IS ORDERED that:

1. The application of OnSite Access Local, LLC (U-6270-C) (OnSite) to transfer assets used for the provision of telecommunications services to Focal Financial Services, Inc. for the use of Focal Communications of California (U-5922-C) is granted, subject to the conditions set forth below.
2. OnSite shall notify the Director of the Commission's Telecommunications Division in writing of the actual date of transfer of assets, as authorized herein, within 10 days after completion of the transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. OnSite shall notify all of its California customers again that it intends to cease business in California and has obtained Commission approval to do so. OnSite shall advise them of the process by which they can select a new service provider.
4. OnSite and Focal Communications shall make all books and records available for review and inspection upon Commission staff request.
5. Upon completion of the transfer and notification to customers, OnSite shall file an Advice Letter surrendering its certificate of public convenience and necessity in California.
6. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.
7. Application 01-07-033 is closed.

This order is effective today.

Dated _____, at San Francisco, California.